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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,717	11/26/2003	Steve Postma	136851SV/YOD GEMS:0245	9773
7590 Patrick S. Yoder FLETCHER YODER P.O. Box 692289 Houston, TX 77269-2289			EXAMINER LIEU, JULIE BICHNGOC	
			ART UNIT 2612	PAPER NUMBER
			MAIL DATE 05/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,717

Applicant(s)

POSTMA, STEVE

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-25 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 26-39, 43, and 44 is/are rejected.
- 7) ☒ Claim(s) 40 and 41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed February 15, 2007. Claims 1-3, 7, 15, 26, 28, 32, and 33 have been amended. Claims 6 have been canceled. Claims 40-44 have been added.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The indicated allowability of claims 27 and 35-39 is withdrawn in view of the newly discovered reference(s) to Sun et al.. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 28-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A program or program code is not statutory because it is not tangible and concrete. The acceptable language should be such as "one or more tangible media having a computer program encoded thereon", etc... or the equivalents thereof.

Claim Objections

5. Claim 26 is objected to because of the following informalities: in the penultimate line, “the component” perhaps should now be recited as “the field replaceable unit”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. Claims 1-4, 6, 7, and 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Mass et al. (US 20030135246 A1).

Claim 1:

Mass et al. (Claude) discloses an apparatus, comprising:

- a. a field replaceable unit 135 configured for operation with the medical device 125;
and
- b. a radio frequency (RF) transmission device 130 couplable to the component 135 and configured to transmit information regarding the component, wherein the field replaceable unit is configured to provide power to the RF transmission device (see [0049] and claim 24).

Claim 2:

The RF transmission device is configured to transmit the information regarding the field replaceable unit in response to a command from the medical device.

Claim 3:

The RF transmission device transmits information about field replaceable unit in response to a signal from the RF interrogator.

Claim 4:

The RF transmission device comprises a power source.

Claim 6:

Component 135 is configured for replacement in an operating environment.

Claim 7:

The RF transmission device transmits information about the component in response to a signal from the RF interrogator.

Claim 32:

The rejection of claim 32 recites the rejection of claim 1, except it is a method claim.

Claim 33:

The method disclosed in Mass et al.'s comprises communicating between the component 135 and the RF device 130.

Claim 34:

The method in Mass et al.'s comprises remotely communicating with the RF device over a network.

Claim Rejections - 35 USC § 103

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mass et al. (US 20030135246 A1) in view of Claude et al. (US Patent No. 5,562,621)

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Claim 26:

Mass et al. discloses an assembly, thus, method comprising:

- a. activating an active radio frequency (RF) device 130; wherein activating comprises powering the active RF device from the field replaceable unit 135 of the medical device; and
- b. receiving the information regarding the field replaceable unit via a transmission from the RF device.

Mass fails to disclose that the information transmitted by the RF device 130 relates to at least one of maintenance, installation, and manufacture of the component of the medical device. However, this concept is old in the art as taught in Claude et al. wherein the manufacture data of a sensor within the medical component 19 is provided by the RF transmitter to the medical console device 14. In light of this teaching, one skilled in the art would have readily recognized applying this teaching in the Mass et al. system because it would provide maintenance information thus to prevent failure of the device due to its age.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mass et al. (US 20030135246 A1) in view of Claude et al. (US Patent No. 5,562,621) and further in view of Sun et al. (US 5,861,019).

Claim 27:

Mass discloses a medical device, comprising:

- a. means 145 for activating a radio frequency (RF) device having information regarding a component of the medical device;

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- b. means 140 for receiving the information regarding the component of the medical device via a transmission from the RF device; and
- c. means 125 for remotely communicating with the RF device.

Mass fails to disclose that the information transmitted by the RF device 130 relates to at least one of maintenance, installation, and manufacture of the component of the medical device. However, this concept is old in the art as taught in Claude et al. wherein the manufacture data of a sensor within the medical component 19 is provided by the RF transmitter to the medical console device 14. In light of this teaching, one skilled in the art would have readily recognized applying this teaching in the Mass et al. system because it would provide maintenance information thus to prevent failure of the device due to its age.

The reference also fails to disclose means for disabling the RF device from broadcasting during operation of the medical device. However, this concept is old and well known in the art as taught in Sun et al.. (col. 15, lines 40-45.) In light of this teaching, one skilled in the art would have readily recognized synchronizing the telemetry transmission with the operation of the implantable device in Mass, that is, not to broadcast during operation of the medical device, to void interference with the operation of the device.

- 9. Claims 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mass et al. (US 20030135246 A1) in view of Sun et al. (US 5,861,019).

Claim 35:

Mass discloses a device, thus method, comprising storing information regarding a component 105 of the medical device and a radio frequency (R.F) device 130 coupled to the component. The reference also fails to disclose instructing the radio frequency (RF) device not to broadcast during operation of the medical device. However, this concept is old and well known in the art as taught in Sun et al.. (col. 15, lines 40-45.) In light of this teaching, one skilled in the art would have readily recognized synchronizing the telemetry transmission with the operation of the implantable device in Mass, that is, not to broadcast during operation of the medical device, to void interference with the operation of the device.

Claim 36:

Mass discloses communicating between the component 105 of the medical device and the radio frequency (RF) device 130.

Claim 37:

Mass further discloses activating the radio frequency (RF) device and receiving the information regarding the component via a transmission from the RF device.

Claim 38:

Mass discloses remotely communicating with the RF device over a network. Fig. 1.

Claim 39:

In Mass, the medical device 135, the medical device component 105, or a combination thereof, is configured to power the RF transmitter.

Claims 42-44:

Mass fails to disclose means for disabling the RF device from broadcasting during operation of the medical device. However, this concept is old and well known in the art as

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taught in Sun et al.. (col. 15, lines 40-45.) In light of this teaching, one skilled in the art would have readily recognized synchronizing the telemetry transmission with the operation of the implantable device in Mass, that is, not to broadcast during operation of the medical device, to void interference with the operation of the device.

Applicant's Arguments

10. The Applicant has argued the following:

Argument 1:

Applicant has argued that implantable device 105 is not field replaceable, but rather requires that the host be operated on in a control medical environment off the field.

Argument 2:

With regards to claim 26, the Applicant has argued to establish prima facie case of obviousness, the examiner must provide evidence, and argued that the mere fact that the references can be combined or modified does not render the resultant combination obvious and stated that the Examiner must provide objective evidence. The Applicant further has argued that the fact the proposed modification would have been well known within the knowledge of one of ordinary skill can not be relied upon to establish a prima facie case of obviousness without some objective reason to combine the teaching of the references.

Response to Applicant's Arguments

Response to Argument 1:

It is submit that implantable device is field replaceable since it can be replaced by another device, for example, when it is no longer operative. Further, the device does not have to be used with in a hospital. Besides, if the monitoring device happens to locate within the hospital, the device is remotely monitoring, and the person wearing the field replaceable unit 105 does not have to be inside the hospital.

Response to Argument 2:

It is submitted that a prima facie case of obviousness is established when the teaching of the prior art would appear to have suggested the claimed subject mater to a person of ordinary skill in the art. The references themselves are objective evidence. For instance, the reference to Claude teaches that the manufacture data of a sensor within the medical component 19 is provided by the RF transmitter to the medical console device 14 to be used as maintenance information to prevent failure of the device due to its age. Since this concept is old in the art, one skilled in the art would have applied it to the Mass device to maintain the device since the medical device in Mass's device is also a sensor which would eventually function improperly due to its age.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

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suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

For above stated reasons, the rejection is maintained.

Allowable Subject Matter

11. Claims 8-25 are allowed.

12. Claims 40 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on 571-272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Julie Lieu', with a stylized, flowing script.

Julie Lieu
Primary Examiner
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May 12, 07